

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 740 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J H SAGAR

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Mr. S.J. Dave, AGP for Respondents Nos. 1 & 2

SERVED for Respondent No. 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 02/08/96

ORAL JUDGEMENT

Jayantilal H.Sagar has filed the present petition under article 226 of the Constitution of India.

2. The petitioner was appointed in the year 1959 as a Technical Assistant by the Dy. Director of Cottage Industries on the establishment of the Registrar of Co.op.Societies on 29.1.59. Thereafter the petitioner

was transferred to Dyeing & Printing School at Amreli. The petitioner was thus working under the respondent no.1 till 1984 but by an order dated 13.3.84 he was transferred on deputation to Gujarat Handloom Development Corporation, Ashram Road, Ahmedabad. He resumed his duties there on 21.4.84. But thereafter his posting on deputation to the Gujarat Handloom Development Corporation, Ahmedabad was cancelled on 19.9.84 and the petitioner was transferred from Palanpur to Ahmedabad but the petitioner was not allowed to actually work. He was also not paid for the work carried out by him with the Gujarat Handloom Development Corporation from 20.4.84 to 27.9.84 and consequently, he filed the present petition and by the petition, he had sought reliefs of payment of wages for the period for which he had actually worked and then to declare that he continued to be an employee of the respondents and to give all the benefits as the employee of the respondents and to give a direction to the respondents to give him posting. After filing of this petition, notice was issued to the respondent and on 13.9.85 it was brought to the notice of this court that the petitioner was given posting by the order dated 7.6.85 as Assistant Instructor, Dyeing and Printing School at Umarpada, Taluka Mangrol and the petitioner accordingly joined the said posting. Thereafter the petitioner filed CA No.4157/85 and said application was decided by order dated 5.11.85 directing the respondents nos 1 and 2 to pay salary due and payable to the petitioner for the period running 20.4.84 to 26.9.84 and for the period running between 17.9.84 and 16.9.85 within four weeks and at the same time the question payment of interest was kept open.

3. After passing of the above order on 5.11.85 in CA No. 4157/85, the petitioner was paid the amount due to him from 20.4.84 to 27.9.84 in January 1985 and as regards the payment for the period running between 27.9.84 and 16.9.85 the payment was made to him on 6.3.85. Thus there is no dispute of the fact that the petitioner has received all his dues towards the pay and wages.

3. Now the only question to be considered and decided by me is as to whether the petitioner has to be paid interest or not and if 'Yes' on what rate and from what date ? There is no dispute of the fact that the petitioner had actually worked for the period running between 20.4.84 and 27.9.84 when the petitioner had put in actual work and when his services were taken by the respondents. There was no justification in not making payment of the same to the petitioner by the respondent

no.1 and 2 as the case may be. When the respondents have taken the services from him, they were bound to make payment to the petitioner. Therefore, as regards the payment of pay and allowances for the period running between 20.4.84 and 27.9.84, I hold that the petitioner is entitled to get interest on the said amount from 1.10.84 till the date of the actual receipt of the said payment and he should be paid interest at the rate of 12 percent for the said period.

4. As regards the period running between 27.9.84 and 16.9.85 it must be mentioned that the petitioner has received pay and allowances though he has not actually worked for the said period. I am aware that the petitioner was not absent from his duty but he was not allowed to work but the fact remains that he has not actually worked during this period. Therefore, I hold that the petitioner is not entitled to get interest for this period. However, the conduct of the respondents nos 1 and 2 in delaying the payment for this period is also not justified. Therefore, had the respondents nos 1 and 2 made payment for the said period within reasonable period after reappointing him on 16.9.85, then on account of the view I am taking, I would not have allowed any interest to him but the petitioner had moved Civil Application No. 4157/85 on 23.10.85 and when there was a direction of the court on 5.11.85 on the said application, to make payment the respondents nos 1 and 2 were not justified at all in not making payment of the same. It is very pertinent to note that though there was a direction by the court to make payment within 4 weeks from the date of that order, the payment for the period running between 20.4.84 and 26.9.84 is made in the month of January 1985 and the payment for the period between 27.9.84 to 16.9.85 is made on 6.3.86. Therefore, in the circumstances, I hold that as regards the payment payable for the period running between 27.9.84 to 16.9.85 I hold that the petitioner is entitled to get interest thereon at the rate of 12 percent from the date of the order i.e. 5.11.85.

5. Thus I hold that the petitioner is entitled to get 12 percent interest on the payment towards his pay and allowances for the period running between 20.4.84 and 27.9.84 at the rate of 12 percent from 1.10.84 till the actual date of payment. This payment is to be made by respondent no.4. The petitioner is entitled to get 12 percent interest on the amount payable towards the pay and allowances for the period between 27.9.84 and 16.9.85 from respondents nos 1 and 2 at the rate of 12 percent interest thereon from 5.11.85 till the actual date of

payment. Mr. S.J.Dave learned A.G.P. for the respondents nos 1 and 2 states that the above amount would be paid to the petitioner as directed within six weeks from the date of receipt of the writ of this Court and in case if they failed to make payment they have to pay further interest at the rate of 12 percent on the the amount of interest thereafter . Rule is made absolute to the aforesaid extent only. No order as to costs.

(S.D.Pandit.J)